



Office *of the* Inspector General

SOCIAL SECURITY ADMINISTRATION

Audit Report

The Social Security Administration's
Compliance with the Martinez
Fugitive Settlement

A-01-16-50073 | March 2016



Office of the Inspector General

SOCIAL SECURITY ADMINISTRATION

MEMORANDUM

Date: March 24, 2016

Refer To:

To: The Commissioner

From: Inspector General

Subject: The Social Security Administration's Compliance with the Martinez Fugitive Settlement (A-01-16-50073)

The attached final report presents the results of the Office of Audit's review. The objective was to assess the Social Security Administration's full compliance with the *Martinez* settlement.

If you wish to discuss the final report, please call me or have your staff contact Steven L. Schaeffer, Assistant Inspector General for Audit, at (410) 965-9700.

A handwritten signature in black ink, appearing to read 'Patrick P. O'Carroll, Jr.' with a stylized flourish at the end.

Patrick P. O'Carroll, Jr.

Attachment

The Social Security Administration's Compliance with the Martinez Fugitive Settlement

A-01-16-50073



March 2016

Office of Audit Report Summary

Objective

To assess the Social Security Administration's (SSA) full compliance with the *Martinez* settlement.

Background

In September 2009, a U.S. District Court approved the *Martinez v. Astrue* nation-wide class action settlement agreement. The *Martinez* lawsuit challenged SSA's fugitive felon policy of basing payment suspensions solely on the existence of an outstanding felony arrest warrant rather than developing information to ensure the individual was "fleeing."

SSA processed *Martinez* settlement relief in four phases. The first phase included beneficiaries whose Old-Age, Survivors and Disability Insurance (OASDI) benefits were suspended after 2006 because of fugitive felon status. The second phase included recipients whose Supplemental Security Income (SSI) payments were suspended or denied after 2006 because of fugitive felon status. The third phase included beneficiaries whose OASDI benefits were suspended or denied between January 1, 2005 and December 31, 2006 because of fugitive felon status. The fourth phase included recipients whose SSI payments were suspended or denied between January 1, 2000 and December 31, 2006 because of fugitive felon status.

Findings

Based on our sample results, we estimate SSA provided approximately \$224.7 million in relief. SSA provided appropriate relief to about 98,260 (93 percent) of the *Martinez* class members. However, SSA improperly processed or did not process approximately \$51 million in relief to about 7,700 (7 percent) of the *Martinez* class members.

In reviewing sample cases that were incorrectly paid, we did not identify any trends or common characteristics. Hence, we were not able to identify any cases for corrective action beyond the 20 we identified during our review of the 275 sample cases. The only way we found to identify additional beneficiaries who were over/underpaid would be to re-review each case. Because of the costs involved in such a review compared to the dollars identified as over/underpaid, we did not recommend SSA take such action unless it can identify a more cost-effective method.

Recommendation

We recommend SSA review and take appropriate corrective action on the 20 cases we sent it in January 2016.

SSA agreed with the recommendation.

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ABBREVIATIONS

| | |
|-------------|---|
| CATS | Civil Action Tracking System |
| OASDI | Old-Age, Survivors and Disability Insurance |
| OIG | Office of the Inspector General |
| POMS | Program Operations Manual System |
| Pub. L. No. | Public Law Number |
| SSA | Social Security Administration |
| SSI | Supplemental Security Income |
| Stat. | United States Statutes at Large |
| U.S.C. | United States Code |

OBJECTIVE

Our objective was to assess the Social Security Administration’s (SSA) full compliance with the *Martinez* settlement.

BACKGROUND

The *Social Security Act* prohibits paying Old-Age, Survivors and Disability (OASDI) benefits and Supplemental Security Income (SSI) payments to a beneficiary/recipient who is “fleeing” to avoid prosecution, custody, or confinement for a felony—and to a beneficiary/recipient who is violating a condition of parole or probation—unless SSA determines there is good cause for paying benefits.¹

In September 2009, a U.S. District Court in California approved the *Martinez v. Astrue* nation-wide class action settlement agreement.² The *Martinez* lawsuit challenged SSA’s fugitive felon policy of basing payment suspensions solely on an outstanding felony arrest warrant rather than developing information to ensure the individual was “fleeing.” As a result, SSA changed its policy to suspend OASDI benefits and deny SSI payments only if the outstanding felony warrant for the individual was for one of three National Crime Information Center Uniform Offense Classification Codes:

- Escape (Offense Code 4901);
- Flight to avoid prosecution, confinement, etc. (Offense Code 4902); and
- Flight-Escape (Offense Code 4999).

SSA processed *Martinez* settlement relief in four phases.

- The first phase included beneficiaries whose OASDI benefits were suspended after 2006 because of fugitive felon status.
- The second phase included recipients whose SSI payments were suspended or denied after 2006 because of fugitive felon status.
- The third phase included beneficiaries whose OASDI benefits were suspended or denied between January 1, 2005 and December 31, 2006 because of fugitive felon status.
- The fourth phase included recipients whose SSI payments were suspended or denied between January 1, 2000 and December 31, 2006 because of fugitive felon status.

¹ *Social Security Act* §§ 202(x)(1)(A)(iv)-(v) and (B)(iii)-(iv), 42 U.S.C. §§ 402(x)(1)(A)(iv)-(v) and (B)(iii)-(iv), as amended by § 203(a) of the *Social Security Protection Act of 2004*, Pub. L. No. 108-203 § 203(a), 118 Stat. 493, 509, (2004), and the *Social Security Act* §1611(e)(4), 42 U.S.C. § 1382(e)(4), as amended by § 203(b) of the *Social Security Protection Act of 2004*, Pub. L. No. 108-203 § 203(b), 118 Stat 493, 510, (2004).

² *Martinez v. Astrue*, No. 08-CV-4735 CW (N.D. Cal. 2009).

In February 2011, we issued a report on SSA’s implementation of the first phase of the *Martinez* settlement agreement.³ Overall, we estimated SSA provided settlement relief totaling approximately \$321.6 million in Phase I of the *Martinez* settlement implementation.⁴ SSA appropriately provided relief to about 27,520 class members. However, we estimated about 1,860 individuals received approximately \$14.3 million more settlement relief than due, and about 760 individuals did not receive approximately \$828,600 in settlement relief that was due.

To conduct our current review, we identified a population of 105,973 individuals listed in SSA’s Civil Action Tracking System (CATS) as potential *Martinez* class members.⁵ In identifying this population, we excluded individuals who were part of our 2011 audit. We selected a random sample of 275 for further analysis. Additionally, we referred cases to SSA for corrective action, as needed. See Appendix A for our scope, methodology, and sample results.

RESULTS OF REVIEW

Based on our sample, we estimate SSA provided approximately \$224.7 million in relief.⁶ SSA provided appropriate relief to about 98,260 (93 percent) of the *Martinez* class members. However, SSA improperly processed or did not process approximately \$51 million in relief to about 7,700 (7 percent) of the *Martinez* class members.⁷

Sample Results

We sampled 275 individuals whom SSA identified as potential *Martinez* class members:

- 255 (93 percent) were processed correctly
 - ✓ 107 received relief totaling \$536,011,⁸ and
 - ✓ 148 were not due relief.⁹
- 20 (7 percent) were not processed correctly

³ SSA, OIG, *Implementation of Phase I of the Martinez Settlement Agreement* (A-01-10-10160), February 2011.

⁴ These individuals received relief under the Title II program. The average amount of relief paid by SSA per person in the sample was \$10,663.

⁵ CATS is an SSA database that tracks potential members involved in class action court cases and manages litigation activity. SSA listed *Martinez* class members in CATS with a court case identifier of F1 through F7.

⁶ For purposes of this review, we use the term “relief” to indicate how SSA compensated the *Martinez* class members. Most of the individuals received relief under the Title XVI program. The average amount of relief paid by SSA per person in the sample was \$2,120.

⁷ Some of these class members either received too much relief or did not receive relief they were due.

⁸ Of the \$536,011, SSA issued \$55,151 as relief under the OASDI program and \$480,860 under the SSI program.

⁹ These individuals were not due any *Martinez* settlement relief for such reasons as not responding to SSA’s requests concerning *Martinez*; the fugitive overpayment was waived and/or deleted before *Martinez*; or the individual was suspended for another reason, such as excess income, during what would have been the *Martinez* period.

- ✓ 16 did not receive \$113,064 in relief they were due,¹⁰ and
- ✓ 4 received \$19,222 more relief than they were due.¹¹

SSA issued instructions to employees on processing the cases.¹² However, we did not identify any trends or common characteristics as to why SSA employees processed the 20 cases incorrectly. Table 1 shows which SSA region handled the 20 sample cases for which *Martinez* relief was not correctly processed.

Table 1: SSA Region Where Martinez Relief Was Not Processed Correctly

| Region | Number of Cases |
|--------------------|-----------------|
| I – Boston | 0 |
| II – New York | 0 |
| III – Philadelphia | 1 |
| IV – Atlanta | 5 |
| V – Chicago | 2 |
| VI – Dallas | 2 |
| VII – Kansas City | 0 |
| VIII – Denver | 1 |
| IX – San Francisco | 6 |
| X – Seattle | 3 |
| Total | 20 |

How SSA Processed Martinez Settlement Relief

SSA issued relief to the class members by

- paying OASDI benefits or SSI payments withheld or recovered because of a fugitive felon warrant;
- applying the relief to recover remaining balance(s) of fugitive felon overpayment(s);
- applying relief to recover any other outstanding overpayment(s) that were not fugitive felon related; or
- any combination of the above.

¹⁰ The \$113,064 was due under the SSI program.

¹¹ Of the \$19,222, SSA issued \$1,115 more relief than due under the OASDI program and \$18,107 more relief than due under the SSI program.

¹² SSA, POMS, GN 02613.000 (May 27, 2015).

Of the \$536,011 in relief, SSA correctly issued

- \$156,778 to *Martinez* class members;
- \$340,682 to recover outstanding fugitive overpayment balances; and
- \$38,551 to recover other outstanding overpayment balances.

Cases Processed Correctly

SSA correctly processed 255 (93 percent) of our 275 sample cases, provided 107 individuals \$536,011 in relief, and determined 148 individuals were not due relief.

For example, for one SSI recipient, SSA suspended SSI payments because of a fugitive felon warrant in March 2005, resulting in a \$2,895 overpayment from March through July 2005. Therefore, this case was a pre-2007 SSI *Martinez* class member. For this type of class member, *Martinez* relief was issued as the removal of any fugitive felon overpayment(s) balance(s) and any other outstanding overpayment(s) balance(s) when relief was issued, not to exceed the fugitive overpayment total.¹³ Before the *Martinez* relief was processed, the class member only had a fugitive felon overpayment outstanding, and SSA recovered \$1,200 of the overpayment; thus, the remaining balance was \$1,695 (\$2,895 - \$1,200). In September 2010, SSA processed relief as a \$1,695 removal of the fugitive felon overpayment balance.

In another case, an SSI recipient's payments were suspended from February through March 2005 because of a fugitive felon warrant, which resulted in a \$1,417 overpayment. When SSA reviewed this case, it determined the recipient also had a parole violation warrant from February through March 2005; therefore, the recipient was not due *Martinez* relief.¹⁴

Cases Provided Less Relief Than Was Due

We found 16 individuals (6 percent) in our sample did not receive \$113,064 in relief they were due. These cases were complex and involved SSA reviewing information spanning several years.

For example, for one SSI recipient, SSA suspended SSI payments because of a fugitive felon warrant in June 2008, resulting in \$8,503 in payments overpaid and withheld from June 2008 through June 2009.¹⁵ This was the amount of relief due. However, in October 2011, the recipient received \$4,459 in relief, \$4,044 (\$8,503 - \$4,459) less than was due. We referred this

¹³ SSA, POMS, GN 02613.880 (December 20, 2011).

¹⁴ On April 13, 2012, a U.S. District Court judge issued a nation-wide class action court order preventing SSA from suspending or denying OASDI benefits and SSI payments based solely on the existence of parole or probation violation arrest warrants. *See Clark v. Astrue*, 602 F.3d 140 (2d Cir. 2010). SSA OIG, *Parole and Probation Violators and the Clark Court Order* (A-01-12-11215), November 2015.

¹⁵ The \$8,503 comprised a \$4,459 overpayment from June through December 2008 and \$4,044 of payments SSA withheld from January through June 2009 because of the fugitive felon warrant.

case to SSA in October 2015 for review, and, in December 2015, SSA agreed the recipient was due additional relief but had not taken steps to issue the additional payments to the class member.

Cases Provided More Relief Than Was Due

We found four individuals (1 percent) in our sample received \$19,222 more relief than they were due. Some of these individuals received more relief than was due because SSA processed relief for a fugitive felon overpayment deleted or never recovered before *Martinez*.

For example, one OASDI beneficiary's benefits were suspended because of a fugitive felon warrant for September 2006, which resulted in a \$1,115 overpayment. In August 2009, which was before the *Martinez* settlement, SSA deleted the fugitive felon overpayment; however, in October 2010, SSA issued relief totaling \$1,115. Therefore, the beneficiary received \$1,115 in relief that was not due. We referred this case to SSA in October 2015 for review, and, in December 2015, SSA agreed it overpaid the recipient but had not taken steps yet to recover the funds from the class member.

CONCLUSIONS

Overall, we estimate SSA provided approximately \$224.7 million in *Martinez* settlement relief. SSA provided appropriate relief to about 98,260 (93 percent) of the *Martinez* class members. However, about 7,700 (7 percent) of the *Martinez* class members did not receive the accurate amount of relief due them.

In reviewing our sample cases that were incorrectly paid, we did not identify any trends or common characteristics. Hence, we were not able to identify any cases for corrective action beyond the 20 identified during our review of the 275 sample cases. The only way we found to identify additional beneficiaries who were over/underpaid was to re-review each case. Because of the costs involved in such a review compared to the dollars identified as over/underpaid, we are not recommending SSA take such action unless it can identify a more cost-effective method.

RECOMMENDATION

We recommend SSA review and take appropriate action on the 20 cases we sent it in January 2016.

AGENCY COMMENTS

SSA agreed with the recommendation; see Appendix B.



Steven L. Schaeffer, JD, CPA, CGFM, CGMA
Assistant Inspector General for Audit

APPENDICES

Appendix A – SCOPE, METHODOLOGY, AND SAMPLE RESULTS

To accomplish our objective, we:

- Reviewed applicable sections of the *Social Security Act* and the Social Security Administration’s (SSA) rules, policies, and procedures.
- Reviewed prior Office of the Inspector General reports related to the *Martinez Settlement Agreement*. Specifically, we reviewed the following reports.
 - ✓ Congressional Response Report: *The Social Security Administration’s Fugitive Felon Program and the Martinez Settlement Agreement* (A-01-09-29177), October 15, 2009.
 - ✓ *Implementation of Phase I of the Martinez Settlement Agreement* (A-01-10-10160), February 25, 2011.
- Identified a population of 105,973 individuals listed as potential *Martinez* class members in SSA’s Civil Action Tracking System.¹
- Randomly sampled and reviewed 275 cases from our *Martinez* class member population.
- Referred cases to SSA for review and corrective action for instances where the *Martinez* relief processed appeared to be incorrect.
- Estimated the number of class members whose *Martinez* relief was processed correctly and incorrectly.
- Quantified the total amount of *Martinez* relief processed and the amount of *Martinez* relief incorrectly processed.

We conducted our audit between September 2015 and January 2016 in Boston, Massachusetts. The principle entities audited were SSA’s field offices and program service centers under the Office of the Deputy Commissioner for Operations; the Office of Income Security Programs under the Office of the Deputy Commissioner for Retirement and Disability Policy; and the Office of Systems Electronic Services under the Office of the Deputy Commissioner/Chief Information Officer for Systems. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on our audit objectives. We tested the data obtained for our audit and determined them to be sufficiently reliable to meet our objective. We believe the evidence

¹ We excluded from this population cases that were included in our prior audit of the first phase of the *Martinez* settlement agreement—SSA OIG, *Implementation of Phase I of the Martinez Settlement Agreement* (A-01-10-10160), February 2011.

obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Sample Results

Population and Sample Size

- Population: 105,973
- Sample Size: 275

Table A–1: Estimated Class Members Who Had *Martinez* Settlement Relief Processed Correctly

| | Class Members |
|------------------------|---------------|
| Sample Results | 255 |
| Point Estimate | 98,266 |
| Projection Lower Limit | 94,964 |
| Projection Upper Limit | 100,807 |

Note: Projections were calculated at the 90-percent confidence level.

Table A–2: Estimated *Martinez* Settlement Relief Processed

| | Dollars |
|------------------------|---------------|
| Sample Results | \$582,990 |
| Point Estimate | \$224,658,964 |
| Projection Lower Limit | \$168,490,215 |
| Projection Upper Limit | \$280,827,714 |

Note: Projections were calculated at the 90-percent confidence level.

Table A–3: Estimated Class Members Who Received Improper *Martinez* Settlement Relief

| | Number of Recipients | Dollars |
|------------------------|----------------------|--------------|
| Sample Results | 20 | \$132,286 |
| Point Estimate | 7,707 | \$50,977,441 |
| Projection Lower Limit | 5,166 | \$25,475,260 |
| Projection Upper Limit | 11,009 | \$76,479,622 |

Note: Projections were calculated at the 90-percent confidence level.

Appendix B – AGENCY COMMENTS



SOCIAL SECURITY

MEMORANDUM

Date: March 17, 2016 Refer To: S1J-3

To: Patrick P. O’Carroll, Jr.
Inspector General

From: Frank Cristaudo /s/
Counselor to the Commissioner

Subject: Office of the Inspector General Draft Report, “The Social Security Administration’s Compliance with the Martinez Fugitive Settlement Agreement” (A-01-16-50073)

Thank you for the opportunity to review the draft report. Please see our attached comments.

Please let me know if we can be of further assistance. You may direct staff inquiries to Gary S. Hatcher at (410) 965-0680.

Attachment

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL DRAFT REPORT,
“THE SOCIAL SECURITY ADMINISTRATION'S COMPLIANCE WITH THE
MARTINEZ FUGITIVE SETTLEMENT” (A-01-16-50073)**

General Comment

We appreciate OIG recognizing that we correctly processed 93 percent of the 275 sample cases, resulting in only 20 cases needing corrective action. We believe that the audit results reflect positively on our efforts to implement the settlement agreement and multi-phased correction process.

As good stewards of our resources and taxpayer funds, we remain focused on the integrity of our programs. As a result of this audit, we are planning to release an Administrative Message reminding employees of the policies and procedures for handling Title II beneficiaries and Title XVI recipients with outstanding fugitive felon, probation, or parole violation warrants.

Recommendation

We recommend SSA review and take appropriate action on the 20 cases we sent it in January 2016.

Response

We agree. By September 20, 2016, we will review and take appropriate action on the 20 cases.

Appendix C – ACKNOWLEDGMENTS

Judith Oliveira, Director, Boston Audit Division

David Mazzola, Audit Manager

Frank Salamone, Senior Auditor

Kevin Joyce, IT Specialist

Brennan Kraje, Statistician

Kimberly Beauchamp, Writer-Editor

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